

Message: KFSM-TV 5 (Fort Smith, Ark.) - 8/16/2017 - Federal Court Rules Arkansas Can Halt Planned Parenthood Funding**Case Information:**

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✉ KFSM-TV 5 (Fort Smith, Ark.) - 8/16/2017 - Federal Court Rules Arkansas Can Halt Planned Parenthood Funding

From Samuel Lee **Date** Thursday, August 17, 2017 3:56 PM
To Samuel Lee
Cc
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Recipients

 (9 Kb HTML)  (409 Kb HTML)

Friends,

This court decision by the Eighth U.S. Circuit Court of Appeals (read below and see attached) could definitely have a positive impact on our efforts in Missouri to defend Planned Parenthood and other individuals who or agencies which perform or refer for abortions. Missouri lawmakers added language similar to Arkansas' in the state budget.

Sam

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Federal Court Rules Arkansas Can Halt Planned Parenthood Funding

Posted 12:34 pm, August 16, 2017, by [Shawnya Meyers](#), Updated at 06:22PM, August 16, 2017

ARKANSAS (KFSM) – [A federal appeals court ruled](#) that Arkansas can halt Medicaid funding for Planned Parenthood on Wednesday (Aug. 16). In 2015, Gov. Asa Hutchinson directed the Arkansas Department of Human Services to end a contract with Planned Parenthood through the Arkansas Medicaid program, essentially cutting off state funding to the reproductive health organization.

The decision came after an anti-abortion group [shared videos](#), which reportedly appeared to show the organization selling fetal tissue for profit. Planned Parenthood, however, [maintained that it did not profit](#) from the fetal tissue that it donated to medical researchers.

The Eighth U.S. Circuit Court of Appeals overturned a district court's preliminary injunction blocking the state from cutting off Medicaid funding for patients who received services through Planned Parenthood.

The plaintiffs, three patients, claimed that suspending funding violated Medicaid's "free choice of provider" provision.

The court ruled that patients didn't have the right to sue over the medical provider. The court found that there are other qualified providers available that provide the same services, and while the state can't steer patients to or from one provider, individuals have "no right to a particular provider the state has decertified."

Planned Parenthood Great Plains [released a statement](#) that said in part: "Planned Parenthood Great Plains (PPGP) condemns the U.S. Court of Appeals Eighth Circuit decision reversing protections for Arkansas Medicaid patients who choose Planned Parenthood for health care. PPGP is an expert, compassionate sexual and reproductive health care provider that Arkansasans rely on for life-saving cancer screenings, STI testing and treatment, and birth control. Today's decision does not go into effect yet and therefore will not have any immediate impacts to Medicaid patients in Arkansas. PPGP is evaluating all options to ensure our patients receive uninterrupted care at Planned Parenthood."

State Rep. Robin Lundstrum, R-Springdale, applauded the decision by the court. She added that of the 179 health clinics in Arkansas, Planned Parenthood operates only two locations around the state.

"They got it right. I think it's the right move. I think it's a good move for the taxpayer. We have 179 health clinics in Arkansas, this doesn't hurt women at all." Both Gov. Asa Hutchinson and Attorney General Leslie Rutledge released separate statements that praised the ruling.

Hutchinson stated: "In 2015, the state terminated its Medicaid provider agreement with Planned Parenthood because there was evidence that Planned Parenthood and its affiliates were acting in an unethical manner and engaging in what appeared to be wrongful conduct. I am pleased with the ruling of the 8th Circuit today reversing Judge Baker on her injunction that blocked the state from proceeding. The decision allows the state to proceed with the termination of Planned Parenthood as a Medicaid provider. This is a substantial legal victory for the right of the state to determine whether Medicaid providers are acting in accordance with best practices and affirms the prerogative of the state to make reasoned judgments on the Medicaid program."

Rutledge said: "The 8th Circuit rightfully agreed with me in my defense of Governor Asa Hutchinson's decision to terminate the contract with Planned Parenthood after videos surfaced allegedly showing Planned Parenthood could be involved in selling aborted fetal body parts for profit," said Attorney General Rutledge. "The Court found that Planned Parenthood and the three patients it recruited could not contest in federal court Arkansas's determination that a medical provider has engaged in misconduct that merits disqualification from the Medicaid program. All patients should have access to ethical, quality and responsible health care, and should never be beholden to a company that is only seeking to protect its profits."

United States Court of Appeals For the Eighth Circuit _____
No. 15-3271

Jane Does, 1-3; Planned Parenthood of Arkansas & Eastern Oklahoma, doing business as Planned Parenthood Great Plains,
11111111111111111111111111111111 Plaintiffs - Appellees,
v.

Cindy Gillespie, 1 Director of the Arkansas Department of Human Services,
11111111111111111111111111111111 Defendant - Appellant.

American Public Health Association; National Center for Lesbian Rights; National Family Planning & Reproductive Health Association; National Health Law Program; National Latina Institut
11111111111111111111111111111111 Amici on Behalf of Appellees. _____
No. 16-4068

Planned Parenthood of Arkansas & Eastern Oklahoma, doing business as Planned Parenthood Great Plains; Jane Does, 1-3
11111111111111111111111111111111 Plaintiffs - Appellees,
v.

Cindy Gillespie is automatically substituted for her predecessor in these cases pursuant to Federal Rule of Appellate Procedure 43(c)(2).
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v.
Cindy Gillespie, Director of the Arkansas Department of Human Services,
11111111111111111111111111111111 Defendant - Appellant.
Appeals from United States District Court for the Eastern District of Arkansas - Little Rock _____

Submitted: September 21, 2016 Filed: August 16, 2017
Before COLLTON, MELLOY, and SHEPHERD, Circuit Judges.
COLLTON, Circuit Judge.

The Arkansas Department of Human Services terminated its Medicaid provider agreements with Planned Parenthood of Arkansas and Eastern Oklahoma after the release of controversial video r
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The district court enjoined the Department from suspending Medicaid payments to Planned Parenthood of Arkansas and Eastern Oklahoma for services rendered to the three patients. The cou
I.

Planned Parenthood of Arkansas and Eastern Oklahoma, an affiliate of the Planned Parenthood Federation of America, operates health centers in Arkansas. We will call the local affiliate As of 2015, Planned Parenthood and the Arkansas Department of Human Services were parties to contracts under which Planned Parenthood participated in the Arkansas Medicaid program. The On August 14, 2015, Governor Hutchinson of Arkansas directed the Department to terminate its Medicaid provider agreements with Planned Parenthood. The Governor said in a public stateme
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represent the values of the people of our state and Arkansas is better served by terminating any and all existing contracts with them." Context makes clear that the "recent revelations The Department, on August 14, 2015, notified Planned Parenthood that it was terminating the Medicaid provider agreements, effective thirty days later, and notified Planned Parenthood of Federal regulations authorized by Congress and promulgated by the Secretary of Health and Human Services require each State to establish appeal procedures for Medicaid providers. 42 U. § 106.06.35-161.400; Ark. Code Ann. § 20-77-1718. Planned Parenthood, however, declined to exercise its appeal rights under Arkansas law and instead identified three patients who were On September 11, 2015, Planned Parenthood and three patients identified as "Jane Does" sued the Department's Director in the district court, seeking a temporary restraining order and a
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terminating Planned Parenthood's contract. The plaintiffs alleged that they were likely to prevail on a claim that the Department, by excluding Planned Parenthood from the Medicaid pro After further briefing by the parties, Planned Parenthood withdrew its claim for relief as a provider, but the Jane Does proceeded with their claims as patients, and the district court After the appeal was submitted, the district court granted the plaintiffs' motion to certify a class of "patients who seek to obtain, or desire to obtain, health care services in Arkans The Department filed a notice of appeal of the class-wide preliminary injunction. The parties then filed a joint motion requesting that we consolidate the
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two appeals, and they waived further briefing and argument. We consolidated the appeals and now consider them together.

II.
A party seeking a preliminary injunction must demonstrate, among other things, a likelihood of success on the merits. *Munaf v. Geren*, 553 U.S. 674, 690 (2008). In this case, a thresho § 1396a(a)(23)(A). If the statute does not create an enforceable federal right, then the Jane Does and the class members cannot sue under § 1983, and there is no likelihood of success Section 1983 provides a cause of action against any person who, under color of law, subjects a citizen to the deprivation of any rights secured by the laws of the United States. *Genera* l. 28 (1981).

To support an action under § 1983, a plaintiff relying on a federal law must establish that Congress clearly intended to create an enforceable federal right. *Gonzaga Univ. v. Doe*, 536

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Transit Corp. v. City of L.A., 493 U.S. 103, 106 (1989). Starting from that premise, Wilder held that the Boren Amendment to § 13(A) of the Medicaid Act created a federal right for pr Later decisions, however, show that the governing standard for identifying enforceable federal rights in spending statutes is more rigorous. It is not enough, as Wilder and Blessing v. Most recently, therefore, the Court observed that Medicaid providers seeking to enforce § 30(A) of the Medicaid Act did not rely on Wilder to proceed under § 1983, because the Court's l
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v. United States, 508 U.S. 200, 215 (1993); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 864 (1992). 2 The provision at issue in this case appears in a section of the Medicaid Act concerning state plans for medical assistance. The Act provides, with exceptions not relevant here, that th The Jane Does contend that § 23(A) creates an enforceable federal right for individual patients to receive services from any provider who is "qualified to perform the service" that they We see significant difficulties with the contention that § 23(A) unambiguously creates an enforceable federal right. First, the focus of the Act is two steps removed 2Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services, 293 F.3d 472 (8th Cir. 2002), cited by the dissent, post, at 24, 26-27, preceded Gonzaga and did not consider w
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from the interests of the patients who seek services from a Medicaid provider. Like the provision at issue in Armstrong, "(i)t is phrased as a directive to the federal agency charged w at 343). Even where a subsidiary provision includes mandatory language that ultimately benefits individuals, a statute phrased as a directive to a federal agency typically does not con Research Ass'n, Inc. v. Couto, 450 U.S. 754, 756 n.1, 772-73 (1981).
Second, Congress expressly conferred another means of enforcing a State's compliance with § 23(A)—the withholding of federal funds by the Secretary. 42 U.S.C. § 1396c. Congress also a § 1396a(a)(4). Under that authority, the Secretary has required States to give providers the right to appeal an exclusion from the Medicaid program. 42 C.F.R. § 1002.213. 3 Because other sections of the Act provide mechanisms to enforce the 3It was foreseeable that federal regulations would provide for state administrative and judicial review of provider exclusions, because Congress specified that the Secretary may exclude -9-
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State's obligation under § 23(A) to reimburse qualified providers who are chosen by Medicaid patients, it is reasonable to conclude that Congress did not intend to create an enforceable §§ 1320a-2, 1320a-10; see also *Gonzaga*, 536 U.S. at 291 (applying Suter). Accepting the Jane Does' position would result in a curious system for review of a State's determination that a Medicaid provider is not "qualified." Federal law, as noted, requires th *Gonzaga*, 536 U.S. at 292 (Breyer, J., concurring in the judgment).
Third, statutes with an "aggregate" focus do not give rise to individual rights. *Gonzaga*, 536 U.S. at 288 (quoting *Blessing*, 520 U.S. at 343). This court in *Midwest Foster Care & Adop* at 1200, "Focusing on substantial compliance is tantamount to focusing on the aggregate practices of a state funding recipient." *Id.* at 1201; see *Gonzaga*, 536 U.S. at 288 (explaining that *Blessing* "found that Title IV-D failed to support a § 1983 suit in part because it only required 'substantial compliance' with federal regulations"); -10-
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Blessing, 520 U.S. at 335, 343. The statute at issue in *Midwest Foster Care* concerned "payments on behalf of each child," 42 U.S.C. § 672(a)(1) (emphasis added), thus arguably suggesti Section 23(A) is likewise part of a substantial compliance regime. The Secretary is directed to discontinue payments to a State if he finds that "in the administration of the plan ther The Jane Does, citing decisions of other circuits, rely on the fact that § 23(A) refers to "any individual eligible for medical assistance," and that the Medicaid Act speaks in mandato In our view, this analysis gives insufficient weight to *Gonzaga*'s requirement of unambiguous intent and to the factors that we have discussed above: the reference -11-
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to an "individual" is nested within one of eighty-three subsections and is two steps removed from the Act's focus on which state plans the Secretary "shall approve," 42 U.S.C. § 1396a(b 4 The dissent, post, at 26, asserts that it is "inappropriate" to consider the fact that § 1396a(a) is part of a directive to the Secretary, and proposes to decide the existence of an enf 4Because we conclude that Congress did not unambiguously confer a federal right that is presumptively enforceable under § 1983, we do not adopt the view attributed to us by the dissent, -12-
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context of the statute as a whole. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989); *K-Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988).
The decisions of other courts also can be explained in part by an evolution in the law. The authorities cited by the Jane Does rely significantly (and in the pre-2015 decisions, unders 5 5The district court in *Sabree* concluded: Because Title XIX speaks more in terms of what a State must do to make itself eligible for funding versus the individual treatment of recipients, and because the State need only "comply Sabree ex rel. *Sabree v. Houston*, 245 F. Supp. 2d 653, 660 (E.D. Pa. 2003) (citation -13-

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In support of the view that Congress intends private enforcement of § 23(A) under § 1983, *amici National Health Law Program, et al.*, direct our attention to 42 U.S.C. § 1320a-2. That s In an action brought to enforce a provision of [the Social Security Act], such provision is not to be deemed unenforceable because of its inclusion in a section of [the Act] requiring a The Ninth Circuit found that this text was "hardly a model of clarity." *Sanchez v. Johnson*, 416 F.3d 1051, 1057 n.5 (9th Cir. 2005). The operative first sentence addresses and apparen 6. We do not rely on this aspect of Suter; we omitted; see also *Grammer v. John J. Kane Reg'l Ctrs.-Glen Hazel*, 570 F.3d 520, 533 (3d Cir. 2009) (Stafford, J., dissenting).
6The Conference Report on S 1320a-2 quotes a portion of Suter stating that 42 U.S.C. § 671(a) "only goes so far as to ensure that the States have a plan approved by the Secretary which The intent of this provision is to assure that individuals who have been
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assume that the State must have a plan that is in effect. The second sentence of § 1320a-2 declares what is "intended" by the statute, but does not include an operative provision that Because § 1320a-2 was adopted seven years before *Gonzaga* clarified the law in this area, moreover, the statute does not address the same question that a court must injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they we H.R. Rep. No. 103-761, at 924, 926 (1994) (Conf. Rep.); see also H.R. Rep. No. 102-631, at 366 (1992) (stating that a predecessor bill with virtually identical language "only alters tha
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decide today. Section 1320a-2 speaks to when a "provision" is "deemed unenforceable"; we must decide whether a statute unambiguously "confers an individual right" that can be enforced Section 1320a-2 does not show that § 23(A) of the Medicaid Act creates an enforceable right. This court in *Midwest Foster Care* interpreted § 1320a-2 to mean that a provision of the Act The plurality opinion in Part IV of Armstrong fortifies this conclusion. Four Justices considered whether Medicaid providers had a cause of action under the Medicaid Act itself to enfo
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to determine whether Congress intended to confer individual rights upon a class of beneficiaries—the same inquiry that informs whether a statute confers rights enforceable under § 1983.
7

The lack of a judicially enforceable federal right for Medicaid patients does not mean that state officials have unfettered authority to terminate providers. Patients can receive servi
?The respondents, the Solicitor General, and several other amici brought § 1320a-2 to the Court's attention in Armstrong. Brief for Respondents at 43, *Armstrong*, 135 S. Ct. 1378 (No. 1
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Given our conclusion that § 23(A) of the Medicaid Act does not give the Jane Does or the class of Medicaid beneficiaries an enforceable federal right that supports a cause of action und SHEPHERD, Circuit Judge, concurring.
I concur in the court's opinion today, but I write separately to present an alternative ground for reversal. In my view, even if § 23(A) provides a substantive right that the plaintiff Assuming that § 23(A) grants the plaintiffs a private right of action, we must examine the precise contours of that right. Cf. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 280 (2002) (requiring But the Supreme Court's decision in *O'Bannon v. Town Court Nursing Center*, 447 U.S. 773 (1980), tells us the right created by § 23(A) is far more narrow: the
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right to choose among a range of qualified providers. *O'Bannon* involved Medicaid recipients residing in a nursing home that initially qualified as a Medicaid provider. *Id.* at 775. Af I see two important takeaways from *O'Bannon*. First, the contours of the right granted by § 23(A) are circumscribed. Medicaid recipients have the enforceable right to a range of qualif 8. But there exists no right to a particular provider the state has decertified. Second, § 23(A) does not give Medicaid
8For these reasons, the dissent's complaint about my construction of the right granted by § 23(A)—that it would be "self-eviscerating"—is unfounded. Section 23(A) protects Medicaid re
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recipients the right "to challenge the merits of a State's assertion that a provider of Medicaid services is no longer qualified to provide Medicaid services or to challenge the State's *O'Bannon* controls the outcome of this case. The plaintiffs are asserting a right—the absolute right to a particular provider of their choosing—that § 23(A) does not grant them. The ri
The plaintiffs argue on appeal that *O'Bannon* concerned "only a procedural due process claim," and therefore we should not consider it controlling because the plaintiffs in this case ass
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This view, however, is patently flawed because it ignores the very language of *O'Bannon*. The Supreme Court clearly stated that it was defining the contours of the "substantive right .
786. As courts of appeals, have no authority to dismiss binding precedent from the highest court in the land, especially when that precedent is on point. See *Hennepin Cnty. v. The plaintiffs' argument also exhibits a fundamental misunderstanding of due process rights. Any right to due process, whether asserted as a procedural or substantive claim, exists only Const. amend. XIV. They identified § 23(A) as the source of their due process rights. See *O'Bannon*, 447 U.S. at 784-85 (discussing § 23(A) as one of two sources identified by the plai
The dissent contends that I misunderstand the plaintiffs' argument. It then explains that the plaintiffs are not claiming that § 23(A) entitles them to choose a
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provider rightfully disqualified from the pool of Medicaid providers, but rather they argue that Arkansas's decertification of Planned Parenthood as a qualified provider constitutes gov The dissent's attempt to distinguish *O'Bannon* fails because it assumes that Planned Parenthood was somehow wrongfully disqualified as a Medicaid provider. The dissent claims to find pr
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MELLOY, Circuit Judge, dissenting.
Because I would join the four other circuit courts and numerous district courts that all have found a private right of enforcement under 42 U.S.C. § 1396a(a)(23)(A), I respectfully diss 2013); *Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health*, 699 F.3d 962 (7th Cir. 2012); *Harris v. Olszewski*, 442 F.3d 456 (6th Cir. 2006).
In *Blessing v. Estee Lauder*, 520 U.S. 329 (1997), the Supreme Court set forth a three-factor test to determine whether a statutory provision creates a private right of action enforceable u This court has applied the *Blessing* test a number of times to other statutory provisions. See *Spectra Commc'n's Grp., LLC v. City of Cameron*, 806 F.3d 1113 (8th Cir. 2015) (finding no p 2006) (finding no private right of action under 42 U.S.C. § 1396a(a)(17)); *Walters v.*
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Weiss, 392 F.3d 306 (8th Cir. 2004) (finding no private right of action under 42 U.S.C. § 657(a)); *Mo. Child Care Ass'n v. Cross*, 294 F.3d 1034 (8th Cir. 2002) (finding a private right Applying the *Blessing/Gonzaga* framework in the present case, I would hold that 42 U.S.C. § 1396a(a)(23)(A), the "freedom-of-choice provision," does create a private right of action. Th Further, the freedom-of-choice provision "is not so vague and amorphous that its enforcement would strain judicial competence." *Blessing*, 520 U.S. at 340-41 (citation and internal quot
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Thus, there are two criteria providers must meet: (1) the provider must be "qualified to perform the service or services required"; and (2) the provider must "undertake[l to provide . A court can readily determine whether a particular health care provider is qualified to perform a particular medical service, drawing on evidence such as descriptions of the service reg 1d. at 968 (footnote omitted). And as the Sixth Circuit noted, "while there may be legitimate debates about the medical care covered by or exempted from the freedom-of-choice provision Moreover, the freedom-of-choice provision is a mandatory provision. Under the provision, states "must provide" the free choice of providers to Medicaid-eligible individuals. As a resu
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parenthood of Ind., 699 F.3d at 974. Thus, I would hold that § 1396a(a)(23)(A) unambiguously creates a presumption of a private right enforceable under § 1983. See *Gonzaga*, 536 U.S. a "The State may rebut this presumption by showing that Congress 'specifically foreclosed a remedy under § 1983.'" *Id.* at 284 n.4 (quoting *Smith v. Robinson*, 468 U.S. 992, 1004-05 n.9 First, the majority, ante, at 8-10, finds that the freedom-of-choice provision does not unambiguously confer an individual right. In so finding, the majority considers the Medicaid Act
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private right of action to challenge proposed state budget cutbacks that would violate the right to early and periodic screening, diagnosis, and treatment services under 42 U.S.C. §§ 13 Second, the majority, ante, at 9, states that "[b]ecause other sections of the Act provide mechanisms to enforce the State's obligation under § 23(A) to reimburse qualified providers wh at 347 (alteration in original) (quoting *Golden State Transit Corp.*, 493 U.S. at 106).
Third, the majority, ante, at 10-11, finds private enforcement foreclosed because § 23(A) is "part of a substantial compliance regime." Thus, according to the majority, we can "infer a
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Arkansas law, there is no remedy available for Medicaid-eligible individuals harmed by the termination decision.
Fourth, the majority relies on *Armstrong v. Exceptional Child Center Inc.*, 135 S. Ct. 1378 (2015), in reaching its decision. I do not read *Armstrong* to overrule or even undermine the r § 1396a(a)(30)(A). There, it was undisputed that § 1983 was not an available remedy, as § 30(A) does not have any rights-creating language nor does it refer to individual Medicaid bene provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan . . . as may be necessary to safeguard against unnece 42 U.S.C. § 1396a(a)(30)(A). The Supreme Court held that
[t]he provision for the Secretary's enforcement by withholding funds might not, by itself, preclude the availability of equitable relief. But it does so when combined with the judicial
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Armstrong, 135 S. Ct. at 1385 (second alteration and omission in original) (citation omitted) (quoting 42 U.S.C. § 1396a(a)(30)(A)). In contrast, § 23(A) has only two criteria, neither Finally, to the extent the majority discounts the four other circuits that have found a private right of action under the freedom-of-choice provision based upon an alleged evolution of The Fifth, Sixth, Seventh, and Ninth Circuits all applied the *Blessing/Gonzaga* framework to hold that the freedom-of-choice provision creates a private right enforceable under § 1983.
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Government provides financial assistance to States so that they may furnish medical care to needy individuals.'" (quoting Wilder, 496 U.S. at 502)); id. at 974-75 (relying on Wilder to I also disagree with the concurrence's alternative argument for reversing the district court. O'Bannon held: When enforcement of [minimum standards of care] requires decertification of a facility, there may be an immediate, adverse impact on some residents. But surely that impact, which is an 447 U.S. at 787. As the Fifth Circuit recently explained, "the [O'Bannon] plaintiffs had no right to reside in an unqualified facility when the disqualification decision was connected -30- Appellate Case: 15-3271 Page: 30 Date Filed: 08/16/2017 Entry ID: 4568936

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Medicaid program, the provider's competency and professional standing as a medical provider generally." Betlach, 727 F.3d at 969. Here, like in Gee, Arkansas did not decertify Planned Parenthood as a medical provider. Rather, the state terminated only Planned Parenthood's Medicaid Provider Agreement; Planned Pare -31- Appellate Case: 15-3271 Page: 31 Date Filed: 08/16/2017 Entry ID: 4568936
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Based on the foregoing discussion, I would hold that the freedom-of-choice provision does create an individual right enforceable under § 1983. That right allows individuals to challenge 9 As a result, I would affirm the orders of the district court enjoining the Arkansas Department of Human Services from suspending Medicaid payments.

9Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 114 (8th Cir. 1981) (en banc) ("[W]hether a preliminary injunction should issue involves consideration of (1) the threat of irrepa -32- Appellate Case: 15-3271 Page: 32 Date Filed: 08/16/2017 Entry ID: 4568936
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United States Court of Appeals For The Eighth Circuit Thomas F. Eagleton U.S. Courthouse 111 South 10th Street, Room 24.329 St. Louis, Missouri 63102
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VOICE (314) 244-2400 FAX (314) 244-2780 www.ca8.uscourts.gov

August 16, 2017
Mr. Lee P. Rudofsky ATTORNEY GENERAL'S OFFICE 200 Catlett-Prien Building 323 Center Street Little Rock, AR 72201-0000 RE: 15-3271 Planned Parenthood of AR, etc., et al v. on post- submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No gr

Clerk of Court
JMM Enclosure(s) cc: Ms. Bettina E. Brownstein Mr. Erwin Chemerinsky Mr. Carmine Joseph Cordi Jr. Mr. David A. Curran
Mr. Colin Jorgensen
Mr. Charles Lyford
Mr. Jim McCormack
Ms. Martha Jane Perkins
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Ms. Jennifer Sandman Mr. David W. Sterling
District Court/Agency Case Number(s): 4:15-cv-00566-KGB 4:15-cv-00566-KGB

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United States Court of Appeals For The Eighth Circuit Thomas F. Eagleton U.S. Courthouse 111 South 10th Street, Room 24.329 St. Louis, Missouri 63102
Michael E. Gans Clerk of Court
VOICE (314) 244-2400 FAX (314) 244-2780 www.ca8.uscourts.gov

August 16, 2017
West Publishing Opinions Clerk 610 Opperman Drive Building D D4-40 Eagan, MN 55123-0000 RE: 15-3271 Planned Parenthood of AR, etc., et al v. Cindy Gillespie 16- Clerk of Court
JMM Enclosure(s) cc: MO Lawyers Weekly
Appellate Case: 15-3271 Page: 1 Date Filed: 08/16/2017 Entry ID: 4568936
35 of 36

District Court/Agency Case Number(s): 4:15-cv-00566-KGB 4:15-cv-00566-KGB

Appellate Case: 15-3271 Page: 2 Date Filed: 08/16/2017 Entry ID: 4568936
36 of 36

Message: RE: 08-14-17 Bill Signing photos 3 of 3**Case Information:**

Message Type: Exchange
Message Direction: External, Inbound
Case: GOV_10032017_Search
Capture Date: 10/3/2017 9:43:17 AM
Item ID: 29387686
Policy Action: Not Specified

✉ RE: 08-14-17 Bill Signing photos 3 of 3

From Susan Klein **Date** Tuesday, August 22, 2017 3:33 PM
To Kempf, Sherri
Cc Scott, Todd
Journal sherri.kempf@governor.mo.gov;todd scott@governor.mo.gov
Recipients

Thank you Sherri!
Susan

From: Kempf, Sherri [mailto:Sherri.Kempf@governor.mo.gov]
Sent: Tuesday, August 22, 2017 3:22 PM
To: Susan Klein <Susan.K@missourilife.org>
Cc: Scott, Todd <todd.scott@governor.mo.gov>
Subject: FW: 08-14-17 Bill Signing photos 3 of 3

Susan,

I have attached all the pictures that Tim Bommel, the House photographer, took the day you were here. Please let me know if you need any other assistance.

Sherri L. Kempf
Legislative Assistant
Office of Governor Eric Greitens

(573)751-8443 - Office
[REDACTED] - Mobile

Message: FW: 2 of 3**Case Information:**

Message Type: Exchange
Message Direction: External, Inbound
Case: GOV_10032017_Search
Capture Date: 10/3/2017 9:43:17 AM
Item ID: 29387687
Policy Action: Not Specified

✉ FW: 2 of 3

From Kempf, Sherri **Date** Tuesday, August 22, 2017 3:49 PM
To 'Susan Klein'
Cc

[081417-0087-1.jpg](#) (345 Kb HTML) [081417-0088-1.jpg](#) (339 Kb HTML) [081417-0093-1.jpg](#) (341 Kb HTML) [081417-0097-1.jpg](#) (289 Kb HTML)
[081417-0098-1.jpg](#) (295 Kb HTML) [081417-0100-1.jpg](#) (294 Kb HTML) [081417-0101-1.jpg](#) (315 Kb HTML) [081417-0103-1.jpg](#) (314 Kb HTML)
[081417-0106.jpg](#) (315 Kb HTML) [081417-0108.jpg](#) (315 Kb HTML) [081417-0110.jpg](#) (313 Kb HTML) [081417-0111-1.jpg](#) (274 Kb HTML) [081417-0111.jpg](#) (269 Kb HTML) [081417-0116.jpg](#) (293 Kb HTML)

Sherri L. Kempf
Legislative Assistant
Office of Governor Eric Greitens

(573)751-8443 – Office
[REDACTED] - Mobile

-----Original Message-----

From: Tim Bommel [<mailto:Tim.Bommel@house.mo.gov>]
Sent: Monday, August 14, 2017 3:20 PM
To: Kempf, Sherri <Sherri.Kempf@governor.mo.gov>
Subject: 2 of 3

Attached are the photo(s) of your recent event.

If you feel that this photo is newsworthy, please add a short caption and forward to your local newspapers.

Please save this photo to a folder.
Reorders may be placed at <http://moapps/photoorder/photoorder.aspx>

Tim Bommel
Photojournalist
Missouri State Capitol, Rm. B-32
Jefferson City, MO 65101
573-522-3149 (office)
573-526-3844 (fax)
tim.bommel@house.mo.gov









| _____ |



















Message: RE: 2 of 3**Case Information:**

Message Type: Exchange
Message Direction: External, Inbound
Case: GOV_10032017_Search
Capture Date: 10/3/2017 9:43:17 AM
Item ID: 29387688
Policy Action: Not Specified

✉ RE: 2 of 3

From Susan Klein **Date** Tuesday, August 22, 2017 3:55 PM
To Kempf, Sherri
Cc
Journal sherri.kempf@governor.mo.gov
Recipients

Thank you Sherri!
Susan

From: Kempf, Sherri [mailto:Sherri.Kempf@governor.mo.gov]
Sent: Tuesday, August 22, 2017 3:49 PM
To: Susan Klein <Susan.K@missourilife.org>
Subject: FW: 2 of 3

Sherri L. Kempf
Legislative Assistant
Office of Governor Eric Greitens

(573)751-8443 - Office
[REDACTED] - Mobile

-----Original Message-----

From: Tim Bommel [<mailto:Tim.Bommel@house.mo.gov>]
Sent: Monday, August 14, 2017 3:20 PM
To: Kempf, Sherri <Sherri.Kempf@governor.mo.gov>
Subject: 2 of 3

Attached are the photo(s) of your recent event.

If you feel that this photo is newsworthy, please add a short caption and forward to your local newspapers.

Please save this photo to a folder.
Reorders may be placed at <http://moapps/photoorder/photoorder.aspx>

Tim Bommel
Photojournalist
Missouri State Capitol, Rm. B-32
Jefferson City, MO 65101
573-522-3149 (office)
573-526-3844 (fax)
tim.bommel@house.mo.gov

Message: Missouri Educational-Funding Reform Policy Dialogue: September 14th, 2pm-4pm, Room 216, Missouri Statehouse**Case Information:**

Message Type: Exchange
Message Direction: External, Inbound
Case: GOV_10032017_Search
Capture Date: 10/3/2017 9:43:17 AM
Item ID: 29387689
Policy Action: Not Specified

✉ Missouri Educational-Funding Reform Policy Dialogue: September 14th, 2pm-4pm, Room 216, Missouri Statehouse

From Robert J. Zafft **Date** Friday, September 01, 2017 12:57 PM
To Robert J. Zafft
Cc
Journal will.scharf@governor.mo.gov
Recipients

 [DOCS-#1679185-v1-Spreadsheet.XLSX](#) (15 Kb HTML)

Ladies and Gentlemen,

I am pleased to confirm our policy dialogue on Missouri Educational-Funding Reform with Will Scharf, Policy Director for Governor Greitens.

The meeting is set for September 14th, 2pm-4pm, Room 216, Missouri Statehouse.

The current proposed agenda is:

2:00-2:15 – Quick round of introductions (Moderator: Zafft)
2:15-2:30 – Debrief of Missouri educational funding-reform efforts in the previous legislative session. The Administration's perspective on lessons learned (Moderator: Scharf)
2:30-3:00 – Relevant policy experience and initiatives from other states (Moderator: Scharf)
3:00-3:50 – Issues and priorities for Missouri reform (Moderator: Scharf)
3:50-4:00 – Meeting summary and next steps for the policy-dialogue group (Moderator: Zafft)

Based on my individual conversations with policy-dialogue-group members, I will circulate a short briefing note early next week. A conference call is scheduled for Thursday, September 7, 2pm-3pm, to discuss the briefing note.

Please confirm by Reply email your participation in the September 7th call and/or September 14th meeting.

A list of current invitees is below. When you confirm participation, please let me know what contact information (i.e., email address, telephone number) I may circulate among policy-dialogue-group members.

Thank you very much.

Sincerely,

Robert Zafft

1		Amy		Castor		Principa	El Dorado Christian Schoo
2		Thomas	J.	Cathey	Ed.D.	Assistant to President - Director for Legal Legislative Issues	Association of Christian Schools Internationa
3		Larry	D.	Daugherty	Ed.D.	Midwest Regional Representative	Renewanation
4		Jamie		Driver			Independent Schools of St. Louis
5		Lila		Duewe		Principa	Grandview Christian Schoo
6		Alan		Freeman		Assistant to President - Schools	Lutheran Church Missouri Synod
7		Nicolette		Gibson		Executive Director	MoCape
8		Linda		Harrelson		Head of Schoo	Summit Christian Academy
							Missouri Catholic

9		Mike		Hoey		Executive Director	Conference
10		Quentin		Johnston		Headmaster	Whitefield Academy
11		Suzanne		McCarles			Independent Schools of Kansas City
12		Michael		McShane		Director of Education Policy	Show-Me Institute
13	Rabbi	A.	D.	Motzen		Director of State Relations	Agudath Israel of America
14	Dr.	Kurt		Nelson		Superintendent	Archdiocese of St. Louis
15	Dr.	Dan		Peters		Superintendent	Diocese of Kansas City - St. Joseph
16		Laura		Slay		Executive Director	Children's Education Alliance of Missouri
17		Nita		Tripp		Head Administrator	Grandview Christian School
18		Leon		Witt		Superintendent	Diocese of Springfield-Cape Girardeau
19	Sr.	Elizabeth		Youngs		Superintendent	Diocese of Jefferson City
20		Robert		Zafft		Representative	Kadima

Robert Zafft
Greensfelder, Hemker & Gale, P.C.
10 South Broadway, Suite 2000
St. Louis, MO 63102-1774

Telephone: 314-516-2635
Telefax: 314-241-8624
<https://www.linkedin.com/in/robertzafft>

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Sheet1

	A	B	C	D	E	F	G	H
	Prefix	First	MI	Last		Suf	Title	
1					El Dorado Christian School	1600 S. Ohio Street	El Dorado Springs	MO
2	1	Amy	Castor	Principal			Assistant to President - Director for Legal Legislative Issues Midwest Regional Representative	
	2	Thomas J.	Cathey	Ed.D.			Association of Christian Schools International	731 Chapel Hills Drive
3								
4	3	Larry	D.	Daugherty	Ed.D.		Renewanation	8800 Quill Street
5	4	Jamie	Driver	Independent Schools of St. Louis	idriver@micds.org	Possible	Preferred	
6	5	Lila	Duewel	Principal	Grandview Christian School	12340 Grandview Road	Grandview	MO
	6	Alan	Freeman	Assistant to President - Schools Executive Director	Lutheran Church Missouri Synod	alan.freeman@mo.lcms.org	Available	Available
7	7	Nicolette Gibson		MoCape		missouricape@gmail.com	Preferred	Possible
8	8	Linda	Harrelson	Head of School	Summit Christian Academy	1500 SW Jefferson	Lee's Summit	MO
9	9	Mike	Hoey	Executive Director	Missouri Catholic Conference	joeyjm@mocatholic.org		
10	10	Quentin Johnston	Headmaster	Whitefield Academy		8929 Holmes Road	Kansas City	KS
11	11	Suzanne McCanles	Independent Schools of Kansas City Director	suzanne.mccanles@oakhilldayschool.org ?			?	
12	12	Michael McShane	Education Policy	Show-Me Institute		5297 Washington Place	St. Louis	MO
13	13	Rabbi A.	D.	Motzen	Director of State Relations Archdiocese of St. Louis		Agudath Israel of America	admotzen@agudathisr.org
14	14	Dr. Kurt	Nelson	Superintendent			20 Archbishop May Drive	St. Louis
15	15	Dr. Dan	Peters	Superintendent				
16	16	Laura Slay	Executive Director	Children's Education Alliance of Missouri	Diocese of Kansas City - St. Joseph	peters@diocesekcsj.org	After 1:30 pm	
17	17	Nita Tripp	Head Administrator	Grandview Christian School	1310 Papin Street			
18	18	Leon Witt		Superintendent	12340 Grandview Road	Grandview	MO	
19	19	Sr. Elizabeth Youngs		Superintendent	Diocese of Springfield-Cape Girardeau	MO	lwitt@dioscg.org	Preferred
20	20	Robert Zafft	Representative	Kadima	Greensfelder, Hemker & Gale, P.C.	Diocese of Jefferson City	Jefferson City	MO
21							10 S. Broadway, Suite 2000	St. Louis
22								
23	1679185							

Message: RE: Sam - Let me know when you'd like to meet**Case Information:**

Message Type: Exchange
Message Direction: External, Inbound
Case: GOV_10032017_Search
Capture Date: 10/3/2017 9:43:17 AM
Item ID: 29387690
Policy Action: Not Specified

✉ RE: Sam - Let me know when you'd like to meet

From Samuel Lee **Date** Wednesday, September 06, 2017 3:38 PM
To Scott, Todd
Cc
Journal todd.scott@governor.mo.gov
Recipients

 [image001.jpg](#) (9 Kb HTML)

Todd,

Sorry for not getting back to you. I've been tied up with other work-related things, and I'm waiting for my youngest daughter, Rachel, to give birth to her first child any day now (she is due around September 15). She and her husband live near Cincinnati, so my wife and I will head in that direction once she starts going into labor.

It is possible that I will scoot up to Jefferson City early next week, but I can't schedule anything at the moment.

Let's stay in touch!

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585

Email: samuelhlee@mindspring.com
Twitter: [@samuelhlee](#)

 CLM Logo & Address

From: Scott, Todd [mailto:todd.scott@governor.mo.gov]
Sent: Thursday, August 31, 2017 1:51 PM
To: 'Samuel Lee' <samuelhlee@mindspring.com>
Subject: FW: Here is the first installment of the massive amount of bureaucracy involved in applying for and complying with Alternatives to Abortion (A2A) funding

Sam – Let me know when you'd like to meet.

Thanks.

Todd Scott
Sr. Legislative/Policy Advisor
Office of Gov. Eric Greitens
(573) 751-3222 - Main
 - Mobile

From: Backes, Dusty
Sent: Monday, August 14, 2017 9:42 AM
To: Scott, Todd <todd.scott@governor.mo.gov>; Whaley, Caitlin <Caitlin.N.Whaley@dss.mo.gov>
Cc: Neustadt, Jennae <Jennae.Neustadt@governor.mo.gov>
Subject: RE: Here is the first installment of the massive amount of bureaucracy involved in applying for and complying with Alternatives to Abortion (A2A) funding

Just let me know when you want to meet. I understand they moved A2A over to DSS. Joy Benne (751-7027) (joy.e.bene@dss.mo.gov) runs the program. I will have the purchasing dept. involved in the meeting. Just let me know when and I will set it up.

Thanks.

Dustin

From: Scott, Todd
Sent: Monday, August 14, 2017 9:04 AM
To: Whaley, Caitlin <Caitlin.N.Whaley@dss.mo.gov>; Backes, Dusty <Dusty.Backes@oa.mo.gov>

Cc: Neustadt, Jennae <Jennae.Neustadt@governor.mo.gov>
Subject: FW: Here is the first installment of the massive amount of bureaucracy involved in applying for and complying with Alternatives to Abortion (A2A) funding

Caitlyn and Dusty – A friend who works in the pro-life movement contacted me last week to share frustrations over how convoluted the process has become to apply for alternatives to abortion (A2A) funding from the state. He has described the process below and has provided several attachments to make his point.

I would like to convene a meeting with those on the front lines of the effort to provide the services paid for by the A2A program so that we can better understand their concerns and find ways to make this process as smooth and efficient as possible. Can you start thinking about who from your respective departments should attend? Also, let's make sure that there is no residual resistance from those who may have served in the last administration to make the process unnecessarily burdensome, either deliberately or through a static bureaucratic mindset.

Thanks.

Todd

Todd Scott
Sr. Legislative/Policy Advisor
Office of Gov. Eric Greitens
(573) 751-3222 - Main
[REDACTED] - Mobile

From:

Sent: Friday, August 11, 2017 4:28 PM

To: Scott, Todd <todd.scott@governor.mo.gov>

Subject: Here is the first installment of the massive amount of bureaucracy involved in applying for and complying with Alternatives to Abortion (A2A) funding

Todd,

Here is the first installment of the massive amount of bureaucracy involved in applying for and complying with Alternatives to Abortion (A2A) funding.

I've compiled this from the A2A contract proposal (RFP) from August of last year from the Missouri Office of Administration for A2A, and is derived from the [MissouriBUYS](#) official bid proposal site (search on the word "abortion" in the field "Keyword", or Google search the RFP: "RFPS30034901700042").

Here is also a link to provide another way to view it: <https://webprocure.perfect.com/MainBidBoard?deptfilter=All&statusfilter=All&typefilter=All&commodityCode=&commodityDescription=&search=&ac=0&bidid=86637&bidid=60734&bidtype=Bid&sortby=closed&closeda>

It includes 16 documents totaling (by my count) 258 pages, which I have attached.

Ultimately, nine agencies were given A2A contracts, but note that in some cases, the agency subcontracts to other agencies:

CS170042001-Alliance for Life-Missouri Inc: Awarded Regions 2, 3, 4, 5, 6, 7, 8, and 9

CS170042002-Catholic Charities of Southern Missouri: Awarded Regions 7, 8, and 9

CS170042003-Faith Maternity Care: Awarded Region 4.

CS170042004-The Haven of Grace: Awarded Region 6

CS170042005-Laclede County Pregnancy Support Center: Awarded Regions 5, 7, and 8

CS170042006-The Light House Inc: Awarded Region 3

CS170042007-Lutheran Family and Childrens Services of Missouri: Awarded Regions 1, 3, 4, 6, 7, and 9

CS170042008-Mothers Refuge: Awarded Region: 3

CS170042009-Nurses for Newborns: Awarded Region 6

And even though this was a 12 month appropriation for FY2017, the contract was for only five months: February 1–June 30, 2017. In May and June – near the contract deadline, OA did increase funding for six of the agencies.

A2A is now being operated by the Department of Social Services, and I am told by some of the agencies that the process is even more onerous.

In particular regarding maternity homes, whereas before maternity homes were allowed by OA a per diem per client per day (I am told it was roughly \$105 per day), DSS now requires a convoluted monthly breakdown of individual expenses for the agency, with a pro rata share of A2A clients served by the agency calculated out – and it is due three days after the end of the month!

According to some of the agencies, the standard answer from DSS is that all of this is required because it is "federal money."

The other main complaint is that DSS has sought zero input from the agencies about what services are needed by their clients and how to best provide those services. DSS apparently did not distinguish services provided by a maternity homes (which operates 24/7/365) and pregnancy resource centers. And some of the agencies have particularly difficult clientele because of substance/opioid abuse (Queen of Peace is an example), because they serve moms with other born children or there is extreme poverty, homelessness or abuse issues – yet DSS appears to propose a one-size-fits-all framework.

Todd, this is just the tip of the iceberg, and I don't claim to completely understand all of the difficulties the agencies have. But unless you are a larger agency that is used to government contracts and have robust bookkeeping services, you would never want to get involved.



Message: St. Louis Public Radio - 9/11/2017 - Appeals court to hear challenge to 2 Missouri abortion restrictions next week (Satanic Temple vs. State of Missouri)

Case Information:

Message Type: Exchange
Message Direction: External, Inbound
Case: GOV_10032017_Search
Capture Date: 10/3/2017 9:43:17 AM
Item ID: 29387691
Policy Action: Not Specified

✉ St. Louis Public Radio - 9/11/2017 - Appeals court to hear challenge to 2 Missouri abortion restrictions next week (Satanic Temple vs. State of Missouri)

From: Samuel Lee
To: Samuel Lee
Cc:
Journal: jennae.neustadt@governor.mo.gov;todd.scott@governor.mo.gov;will.scharf@governor.mo.gov
Recipients:

Date: Monday, September 11, 2017 6:56 AM

 (9 Kb HTML)  (326 Kb HTML)  (96 Kb HTML)

Friends,

I'm headed to Kansas City this morning for the oral arguments in front of the Western District Missouri Court of Appeals on the lawsuit of the Satanic Temple vs. the State of Missouri.

Please pray for the attorneys with the Missouri Attorney General's office as they argue before the three-judge panel why Missouri's informed consent law and 72-hour reflection period are constitutional and should stay in effect.

Missouri's informed consent law and waiting period have been instrumental in saving the lives of many unborn children and reducing abortions.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585

Email: samuelhlee@mindspring.com
Twitter: [@samuelhlee](https://twitter.com/samuelhlee)



CLM Logo & Address

<http://news.stlpublicradio.org/post/appeals-court-hear-challenge-2-missouri-abortion-restrictions-next-week#stream/0>

Appeals court to hear challenge to 2 Missouri abortion restrictions next week

By [Rachel Lippmann](#) • 22 hours ago

Two of Missouri's abortion restrictions are again being challenged on religious grounds in court by a member of the Satanic Temple.



The state Court of Appeals will hear arguments Monday on whether a woman, identified in court documents as Mary Doe, should have been allowed to opt out of the state's 72-hour waiting period and its informed consent laws. A Cole County circuit judge [ruled out](#) the case in December, saying she had not made a strong enough argument.

It will be up to the Court of Appeals to decide whether Doe's lawsuit goes to trial.

Doe traveled from Greene County in southwest Missouri to St. Louis in 2015 to have an abortion. She gave the doctor at Planned Parenthood a letter claiming a religious exemption to [Missouri's law](#) that requires women to wait 72 hours to have an abortion.

The letter also said she would not review a booklet about the development of the fetus, which says that life begins at conception and the abortion ends "the life of a separate, unique living human being."

The doctor rejected the letter and Doe later [sued](#), saying the law infringed on her right to practice her religion freely.

"She was being prevented from obtaining an abortion in a manner that was conforming with the best scientific understanding and medical information to her," Satanic Temple national spokeswoman Jex Blackmore said. "And that's fundamental to her religious beliefs."

The Satanic Temple, a self-described political activist group and religious organization that

promotes science and social justice, also is challenging the two restrictions in federal court. A hearing before the 8th U.S. Circuit Court of Appeals is scheduled for Sept. 20.

State officials do not comment on pending lawsuits. The attorney general's office argued in [court documents](#) that the Cole County judge was correct to throw out the case because the law didn't require Doe to do anything other than hear information she didn't agree with.

"Under the plain language of the statute, the interest in avoiding exposure to information with which one disagrees is not an 'exercise of religion' because it does not involve any 'act or refusal to act' that is substantially motivated by sincere religious belief," attorneys for the state wrote in their brief.

The general counsel for the Missouri Catholic Conference, Tyler McClay, said he was confident the appeals court will agree with the original decision.

"There are other arguments you could make with regards to whether it's an undue burden on a woman to have to wait 72 hours, or whether it's

medically necessary," he said. "I don't see it falling on a religious argument like the one she's making." There's no set date for the Court of Appeals' ruling.

Follow Rachel on Twitter: [@rlippmann](#)



- [C\\$1\\$SRC.emz](#)

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Image 1

Rici Hoffarth | St. Louis Public Radio



Message: Columbia Daily Tribune - 9/10/2017 - Planned Parenthood soon could perform abortions in Columbia, Kansas City

Case Information:

Message Type: Exchange
Message Direction: External, Inbound
Case: GOV_10032017_Search
Capture Date: 10/3/2017 9:43:18 AM
Item ID: 29387692
Policy Action: Not Specified

 **Columbia Daily Tribune - 9/10/2017 - Planned Parenthood soon could perform abortions in Columbia, Kansas City**

From: Samuel Lee
To: Samuel Lee
Cc:
Journal: jennae.neustadt@governor.mo.gov;todd.scott@governor.mo.gov;will.scharf@governor.mo.gov
Recipients:

Date: Monday, September 11, 2017 7:25 AM

 (9 Kb HTML)  (51 Kb HTML)

Friends,

This was very, very sad news over the weekend – although not unexpected.

Planned Parenthood announced that it would soon resume abortions at one of its Kansas City, Mo. clinics, and soon after that, at its Columbia, Mo., clinic.

Despite the best efforts of the Missouri Department of Health and Senior Services and the Missouri Attorney General's office, these clinics are reopening after a long hiatus.

Last year, Planned Parenthood vowed to reopen these two abortion facilities (and open two more – in Springfield and Joplin, Mo.) after the U.S. Supreme Court struck down Texas pro-life laws (similar to Missouri's) that required abortion doctors to have local hospital privileges and abortion clinics to be licensed as ambulatory surgical centers. A federal lower court judge earlier this year struck down Missouri's laws and the state was denied a stay of that decision by the Eighth Circuit U.S. Appeals Court while it is being appealed by the AG's office.

But do not lose heart! Missouri's pregnancy resource centers and maternity homes continue to operate in full force, and are helping thousands of pregnant moms each year choose life for themselves and their unborn children.

Abortions in Missouri have continued to decrease over the last year.

And Missouri's new pro-life laws go into effect in October 24 – laws which protect the health and safety of women considering and obtaining abortion – which these clinics may have difficulty complying with.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585

Email: samuelhlee@mindspring.com
Twitter: [@samuelhlee](https://twitter.com/samuelhlee)



CLM Logo & Address

<http://www.columbiatribune.com/news/20170910/planned-parenthood-soon-could-perform-abortions-in-columbia-kansas-city>

Planned Parenthood soon could perform abortions in Columbia, Kansas City

By [Rudi Keller](#)

Posted Sep 10, 2017 at 12:01 AM Updated Sep 10, 2017 at 12:05 AM



The number of licensed abortion clinics in Missouri recently doubled to two. A third, in Columbia, should be licensed soon, marking rare victories for abortion rights supporters in a state politically dominated by their opponents.

While lawmakers were in special session in June and July [debating new abortion restrictions](#), the Missouri Department of Health and Senior Services was working under the gun of a federal court order directing it to issue licenses promptly for clinics in Columbia, Kansas City, Springfield and Joplin. The law written in that special session doesn't take effect until Oct. 24. In late August, the department licensed Comprehensive Health of Planned Parenthood Great Plains to operate an abortion clinic in Kansas City. Planned Parenthood anticipates receiving the license to resume abortions at its Providence Road clinic in Columbia within a few days.

"While we wait for the Missouri Department of Health and Senior Services to issue Planned Parenthood Great Plains' abortion license in Columbia, we mark a hard-fought victory for Missourians who now have one more place to access safe, legal abortion in Midtown Kansas City," Aaron Samulcek, interim president and CEO of Planned Parenthood Great Plains, said in an emailed statement. "This is truly a full-circle moment for PPGP. We promised Missourians in 2015, that extreme ideologues who worked so hard to chip away at our patients' constitutional rights, would not get the last word."

Planned Parenthood Great Plains submitted the applications for Columbia and Kansas City last year, near the time the U.S. Supreme Court [struck down restrictions in a Texas law](#) that set strict facility requirements and required abortion doctors to have privileges at a nearby hospital. While the applications were pending, Planned Parenthood Great Plains and Planned Parenthood of the St. Louis Region and Southwest Missouri sued to block enforcement of similar laws in Missouri.

"PPGP is proud to have the final say — that access to safe, legal abortion is more accessible today than it was yesterday and we look forward to restoring abortion access in Mid-Missouri in the coming days," Samulcek said in the statement.

The applications for clinics in Springfield and Joplin, to be operated by Reproductive Healthcare, an arm of Planned Parenthood's St. Louis affiliate, were submitted May 18. The department has issued the Kansas City license, spokeswoman Sara O'Connor wrote in an email, but she did not indicate when decisions would be issued on the other three.

On April 19, U.S. District Judge Howard Sachs issued an injunction against the Missouri laws that mirrored those of Texas. On May 2, Sachs issued an order stating he "expects current and future licensing applications to be processed promptly, in light of patient needs, and without effective influence from opponents of abortion."

News that new abortion clinics soon will be in operation is disappointing but expected, said Sam Lee, director of Campaign Life Missouri.

"The department has to comply with the court order and the attorney general worked very hard to get a stay while they were appealing the case," Lee said. "I think the department's hands are tied. They are sworn to uphold the law."

The number of abortions performed in Missouri peaked in the early 1980s, almost 25 years before abortion clinics had to obtain licenses as ambulatory surgical centers. In 1982, a woman seeking an abortion in Missouri had 29 providers to choose from. Abortionists performed more than 19,000 abortions that year.

In 2015, the most recent year with available data, 4,765 abortions were performed in the state.

Abortions were [available in Columbia from 1974 until 2012](#), when the physician working for Planned Parenthood moved away. In 2015, Colleen McNicholas, a Washington University gynecological surgeon, received privileges at University of Missouri Hospital and abortions resumed in August of that year. During the same time, a controversial video purporting to show Planned Parenthood officials offering fetal tissue for sale for research riveted the attention of abortion opponents.

An investigation in the Missouri Senate, led by then-state Sen. Kurt Schaefer, R-Columbia and a candidate for attorney general, focused heavily on the Columbia clinic. Under extreme pressure, [MU revoked the privileges](#) granted to McNicholas and abortions ceased at the clinic in late November 2015.

The license applications state that Planned Parenthood expects to perform 220 abortions per year in Columbia and 500 in Kansas City. The applications triggered inspections of the facilities — standard for all health department licensing. The documents provided to the Tribune via Sunshine Law request show the detail of those inspections and Planned Parenthood's response, including objections to attempts to enforce the kind of rules declared unconstitutional in the Texas case.

The Oct. 11 inspection of the Columbia clinic found more than 20 instances where it was not in compliance with licensing requirements, many for paperwork documenting the appointment of the doctors, pathologist contracts and plans for disposing of fetal tissue. Five of the items were not enforceable after Sachs issued the injunction.

Attorney Arthur Benson of Kansas City, in a November response, wrote that several items on the list, such as the configuration of a recovery room and a constantly-running exhaust fan in the patient washroom, were covered under a settlement agreement in place for years. The rest were minor, he wrote.

"However, it seems that trying to remedy these minor issues would be a waste of Planned Parenthood's resources as long as DHSS continues to enforce the physician privileges requirement," Benson wrote.

The law passed in the special session was signed July 26 by Gov. Eric Greitens but it did not include an emergency clause making it effective immediately. After it takes effect, the health department must issue rules detailing how it will enforce the law. Lee said he hopes the department will issue emergency rules as soon as possible.

"I am sure the director, who is a obstetrician-gynecologist himself, is quite aware that these rules need to be put into effect as quickly as possible," Lee said.

The law creates a new license, an abortion facility license, and changes who must provide pre-abortion counseling, among other changes. Planned Parenthood does not expect the law to disrupt the smooth operation of clinics that are licensed before the law takes effect, spokeswoman Bonyen Lee-Gilmore said.

And the possibility of legal action to block the law is always available, she said.

"We are considering all of our options when it comes to legal filings," Lee-Gilmore said.

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Message: St. Louis Review - 9/11/2017 - Planned Parenthood to reinstate abortion services in Kansas City

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Case: GOV_10032017_Search
Capture Date: 10/3/2017 9:43:18 AM
Item ID: 29387693
Policy Action: Not Specified

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From Samuel Lee
To Samuel Lee
Cc
Journal jennae.neustadt@governor.mo.gov;todd.scott@governor.mo.gov;will.scharf@governor.mo.gov
Recipients

Date Tuesday, September 12, 2017 12:49 PM

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<http://s.louisreview.com/article/2017-09-11/planned-parenthood>

Planned Parenthood to reinstate abortion services in Kansas City

Submitted on September 11, 2017

Jennifer Brinker | jbrinker@archstl.org | [twitter: @jenniferbrinker](https://twitter.com/jenniferbrinker)

Planned Parenthood has announced it is reinstating abortion services in Kansas City, Mo., much to the disappointment of pro-life advocates.

The Missouri Department of Health and Senior Services recently issued a license to provide abortion services at the Midtown Kansas City health center. The clinic will be offering medication abortions.

Abortion services also are expected to be restored at the Planned Parenthood clinic in Columbia, Mo., in the "coming days," according to a statement from Comprehensive Health of Planned Parenthood Great Plains.

The announcement comes on the heels of a new law passed by the Missouri General Assembly during a summer special session. The law, which is expected to go into effect Oct. 24, will require abortion clinics to be licensed and ensure care for women injured by abortion. Clinics also will be required to be inspected annually and must have a plan in place for managing medical emergencies.

Deacon Sam Lee, a longtime pro-life lobbyist with Campaign Life Missouri, said he is disappointed, but not surprised by the move. He said he is hopeful that Dr. Randall Williams, director of the Missouri Department of Health and Senior Services, will quickly promulgate rules for the regulation of the new law.

"Abortion is not health care, and chemical abortions can cause an increased risk of hemorrhage and complications requiring hospitalization," Deacon Lee said. "The women of Missouri deserve these protections."

"We pray for the protection of women considering abortion, as well as for their unborn children whose lives are at risk," he said. "We know that the many pregnancy care centers already established in Missouri will continue to provide counseling and resources to promote life for pregnant moms and babies."

Last year, after the U.S. Supreme Court struck down Texas pro-life laws requiring abortion doctors to have local hospital privileges and clinics to be licensed as ambulatory surgical centers, Planned Parenthood vowed it would reopen abortion clinics in Kansas City and Columbia, as well as in Springfield and Joplin, Mo.

In April, U.S. District Judge Howard Sachs ruled in favor of Planned Parenthood's challenge of those laws. Missouri Attorney General Josh Hawley has appealed the decision. Hawley's office wrote to the appeals' court Sept. 8 with notice of the "imminent change" of status in the Kansas City abortion clinic's license.

"It's disappointing, but we will continue working to close down the abortion industry," said Mike Hoey, executive director of the Missouri Catholic Conference. "There will be new regulations based on the new law, so we'll see whether they can comply or not."

Reagan Barklage, western regional director for Students for Life of America, said she was "extremely disappointed" with the news, adding that "the reason that they weren't open before is because they didn't meet basic safety standards compared to other surgical centers. That's not showing respect for women, and I think that women deserve better."

The Kansas City facility is close to Rockhurst University and St. Theresa's Academy, an all-girls Catholic high school, which Barklage said is a clear indication "the abortion industry is targeting our generation. Fortunately, we have a pro-life generation that won't stand for it."

Expanding abortion services will only hurt more women, said Karen Nolkemper, executive director of the archdiocesan Respect Life Apostolate. Post-abortive women who call the apostolate's Project Rachel ministry "are in real pain — whether it's physical, emotional, mental or spiritual pain," she said.

While it's heartbreaking, Nolkemper said she remains hopeful, because "I know life wins in the end."

 Options brochure
The Respect Life Apostolate offers an Options brochure, a guide to local resources for pregnant women, including resource centers and maternity homes, many of which provide food, clothing, financial assistance, counseling, shelter and job training.
For more information on the brochure, visit www.STLrespectlife.org or call (314) 782-7995.

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